

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Astound Broadband, LLC (U6184C), WaveDivision Holdings, LLC, and OH WDH Holdco, LLC for Expedited Approval of Indirect Transfer of Control of Astound Broadband, LLC, Pursuant to California Public Utilities Code Section 854(a).

Application 12-07-012
(Filed July 9, 2012)

DECISION AUTHORIZING TRANSFER OF CONTROL**1. Summary**

Applicants WaveDivision Holdings, LLC, (Wave), its wholly-owned subsidiary Astound Broadband, LLC (Astound) (U6184C), and OH WDH Holdco, LLC (Oak Hill Holdco) are granted approval to consummate a transaction whereby Oak Hill Holdco will acquire Wave, and thereby acquire indirect control of Astound, which is a certificated subsidiary providing facilities-based local and interexchange services in California.

Application 12-07-012 is closed.

2. Parties to the Transaction

WaveDivision Holdings, LLC, (Wave) is a U.S. entity formed under the laws of Delaware, as a limited liability company, with principal offices at 401 Kirkland Place, Suite 500, Kirkland, WA 98033. Wave owns and operates a multi-service communications business which provides cable television,

broadband Internet access, and voice over Internet Protocol (VoIP) services to residential and commercial subscribers.

Wave owns and controls 100% of the issued and outstanding equity ownership interests of Astound Broadband, LLC (Astound), which is a U.S. entity formed under the laws of Washington, as a limited liability company, with principal offices at 401 Kirkland Place, Suite 500, Kirkland, WA 98033. Astound has authority to provide facilities-based local exchange, intraLATA toll, and interexchange telecommunications services in California.¹

Oak Hill Holdco is a limited liability company, formed under the laws of Delaware, with principal offices at 201 Main Street, Suite 1018, Fort Worth, TX 76102. Oak Hill Holdco is controlled by various Cayman Islands private equity funds, including Oak Hill Capital Partners III, L.P. and Oak Hill Capital Partners III (AIV I), L.P. These funds are all managed and controlled by private equity fund manager OHCP MGP III, Ltd. Numerous, primarily U.S.-based investors, including individuals, trusts, institutions and business entities, hold equity in the Oak Hill private equity funds, and none own more than 10% in these funds. Other owners of Oak Hill Holdco are: (i) WaveDivision Capital, LLC, a Washington limited liability company; and (ii) GI Wave Holdings, LLC, a Delaware limited liability company. Oakhill Holdco is not certificated in any jurisdiction to provide telecommunications services.

¹ See Decision (D.) 05-10-039 (approving the Application of Seren Innovations, Inc. and Wave for approval of the transfer of control of Seren's public utility assets and Certificate of Public Convenience and Necessity (CPCN) from Seren to Astound, a wholly-owned subsidiary of Wave. Seren possessed a CPCN to provide local, intra-Local Access and Transport Area toll, and interexchange services in California.) Astound also offers telecommunications services in Washington and Oregon.

3. The Proposed Transaction

Under the terms of the Unit Purchase Agreement, which is attached to the application as Exhibit G, Oak Hill Holdco will acquire indirect control of Astound, through a purchase of the equity ownership interests of Wave. As a result of the transaction, Oak Hill Holdco will acquire ultimate control of Astound at the holding company level.

No transfer of Astound's CPCN, assets, or customers will occur with this transaction. The applicants state that the transaction will not cause any immediate change in the direct ownership or legal structure of Astound. They represent that the transaction will not affect the daily management or operations of Astound, and after the transaction is consummated, Astound will continue to provide service at current rates, terms, and conditions. Applicants further assert that the transaction will not eliminate existing or potential competitors, and will enhance Astound's ability to compete, to the ultimate benefit of consumers.

4. Discussion

The primary standard, by which the Commission reviews whether a transaction should be approved under Section 854(a), is whether the transaction will be "adverse to the public interest."² As part of its determination, and where a company acquiring control of a certificated telecommunications carrier does not possess a CPCN in California, the Commission applies the same requirements that govern a new applicant seeking a CPCN to exercise the type of authority held by the company being acquired. Specifically, the company must demonstrate a minimum of

² See D.03-12-033, at 6; D.01-06-007, at 15.

\$100,000 in cash or cash equivalent and demonstrate adequate technical expertise in telecommunications or a related business.

The applicants have provided information that reflects that the proposed change in ultimate ownership of Astound will not adversely impact its operations or financial status. Applicants have provided information that demonstrates that the acquiring company, Oak Hill Holdco, has sufficient managerial and technical expertise and sufficient financial resources to operate the acquired carrier.

Information provided about Oak Hill Holdco's management team under Exhibit F to the application reflects its significant experience in a variety of industries, including the telecommunications industry. Applicants also state that to the best of their knowledge, no one associated with or employed by Applicants as an affiliate, officer, director, partner, or owner of more than 10% of any of them: (a) was previously associated with a telecommunications carrier that filed for bankruptcy; (b) was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order; (c) was previously associated with any telecommunication carrier that has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of Section 17000, *et seq.* of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers; or (d) is currently under investigation for similar violations. In addition, Applicants have represented that there will be no change in Astound's management, operations, and service offerings and thus the transaction will not affect Astound's operations. Thus, the transaction satisfies the Commission's technical requirements.

As for financial qualifications, the applicants have attached Oak Hill Holdco's 2011 audited consolidated financial statements as Exhibit E, under seal. The financial statement of Oak Hill Holdco reflects that it has more than sufficient cash or cash equivalents to meet the Commission's requirements for acquiring a CPCN. Accordingly, the transaction meets the requisite financial requirements and there is no basis to find that the transaction will adversely affect Astound's financial status.

We find that Applicants have demonstrated that Oak Hill Holdco has the financial and technical qualifications to acquire Astound.

We also find that the transaction is consistent with the public interest. There will be no immediate changes to Astound's direct management or the service that Astound provides as a result of the transfer. Applicants represent that Astound will continue to operate in the same manner after the transaction is completed as it operates today. The applicants also assert that there will be no interruption or disruption of service to customers. The transaction will thus be seamless for Astound's customers. Finally, the applicants note that the transfer of control will enable Astound to become a stronger competitor and allow it to compete with other, larger telecommunications providers in California. Increased competition will benefit consumers and the telecommunications marketplace. Accordingly, we find that the transaction is consistent with the public interest.

5. California Environmental Quality Act (CEQA) Compliance

The application proposes no new construction and thus, there is no possibility that the transaction will have a significant adverse impact on the environment. The proposed transaction does not constitute a "project" under CEQA, California Public Resources Code, Section 21000 *et seq.*

6. Uncontested Matter

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

7. Categorization and Need for Hearings

In ALJ-Resolution 176-3298, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, the Commission concludes that a public hearing is not necessary, and the preliminary determinations in ALJ-Resolution 176-3298 therefore will not be altered.

8. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Karl J. Bemederfer is the assigned Administrative Law Judge in this proceeding.

9. Request to File Under Seal

Pursuant to Rule 11.4, applicants filed a motion for leave to file Exhibits C, E, and G to the application as confidential materials under seal. Applicants represent that the information is competitively sensitive and proprietary and disclosure could place them at an unfair business disadvantage if disclosed. The motion is unopposed. We grant Applicants' motion to treat Exhibits C, E, and G to the application as confidential.

Findings of Fact

1. Wave is a Delaware limited liability company.
2. Astound is a Washington limited liability company and a wholly-owned subsidiary of Wave.

3. In Decision 05-10-039, Astound acquired the CPCN of Seren Innovations, Inc. (U6184C) and became authorized to provide facilities-based local exchange, intraLATA toll, and interexchange services in California.

4. The proposed transaction would result in Oak Hill Holdco acquiring the membership units of Wave, and thereby becoming the ultimate parent of Astound.

5. The applicants have demonstrated that they have sufficient financial resources and the technical expertise to operate as a provider of local exchange services and interLATA and intraLATA services.

6. No new construction is being proposed in the application.

7. No one associated with or employed by Applicants as an affiliate, officer, director, partner, or owner of more than 10% of any of them: (a) was previously associated with a telecommunications carrier that filed for bankruptcy; (b) was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order; (c) was previously associated with any telecommunication carrier that has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of Section 17000, *et seq.* of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers; or (d) is currently under investigation for similar violations.

8. The Applicants have filed a motion for leave to file under seal confidential materials in Exhibits C, E, and G.

9. Notice of this application appeared on the Commission's Daily Calendar on July 18, 2012. There were no protests to the application.

10. No hearings are necessary.

Conclusions of Law

1. The Commission applies the same requirements to a request for approval of an agreement for the indirect transfer of control of providers of local exchange, intraLATA toll, and interexchange services, as it does to an initial applicant for authority to provide such services.
2. Oak Hill Holdco meets the Commission's requirements for an acquiring company of an authorized provider of local exchange and interexchange telecommunications services.
3. The indirect transfer of control of Astound proposed in the application would not be adverse to the public interest.
4. It can be seen with certainty that the proposed transfer will not have any adverse impact on the environment.
5. The application should be approved.
6. The matter is uncontested, and the decision accordingly should be effective on the date it is signed.

O R D E R**IT IS ORDERED** that:

1. Pursuant to Public Utilities Code section 854(a), the indirect transfer of control of Astound Broadband, LLC (U6184C) to OH WDH Holdco, LLC, in accordance with the documents and agreement submitted in conjunction with Application 12-07-012, is authorized.
2. Applicants' unopposed motion to file confidential documents in Exhibits C, E, and G to the application is granted. The information will remain under seal for a period of two years after the date of this order. During this two-year period, this information will remain under seal and may not be viewed by any

person other than the assigned Commissioner, the assigned Administrative Law Judge, the Assistant Chief Administrative Law Judge, or the Chief Administrative Law Judge, except as agreed to in writing by the Applicants or as ordered by a court of competent jurisdiction. If Applicants believe that it is necessary for this information to remain under seal for longer than two years, Applicants may file a new motion at least 30 days before the expiration of this limited protective order.

3. Application 12-07-012 is closed.

This order is effective today.

Dated _____, at San Francisco, California.